

## LABOUR DEPARTMENT

The 25th January, 1995

No. 14/13/87-6Lab./101.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of Chief Administrator, Haryana Urban Development Authority, Manimajra versus Parkash Mali:—

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 123 of 1989

*between*

PARKASH MALL, S/O RAM PHUL, VILLAGE RAMGARH, P. O. BADSHAHPUR, TEHSIL AND DISTRICT GURGAON

*and*

THE MANAGEMENT OF CHIEF ADMINISTRATOR, HARYANA URBAN DEVELOPMENT AUTHORITY, MANIMAJRA (U. T.), CHANDIGARH, (2) EXECUTIVE ENGINEER, HARYANA URBAN DEVELOPMENT AUTHORITY, SECTOR-14, GURGAON, (3) SUB-DIVISIONAL OFFICER, HARYANA URBAN DEVELOPMENT AUTHORITY, SECTOR-14, GURGAON.

*Present :*

Shri Mahavir Tyagi, authorised representative for the workman.

Shri R. S. Sathi, ADA for the management.

## AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—vide Haryana Government Labour Department Endorsement No. 10575—82, dated the 9th August, 1989 :—

Whether termination/retrenchment of services of Parkash Mali is legal and just ?  
If not, to what relief is he entitled ?

2. According to the claim statement, the workman was appointed on 1st October, 1987 and his services were terminated on 1st August, 1988 and at the time of termination, he was drawing wages @ Rs. 630.80. No notice or compensation had been paid to him.

3. In the written statement the management took up the plea that the workman had worked from January, 1988 to July, 1988 for 197 days only and he had failed to report for duty after 31st July, 1988 and since he had not completed 240 days, therefore, he was not entitled to any relief.

4. In the rejoinder, the contents of the written statement were controverted, while those of the claim statement were reiterated.

On the pleadings of the parties, following issue was framed on 23rd April, 1990 :—

Whether termination/retrenchment of services of Shri Parkash Mali is legal and just ?  
If not, to what relief is he entitled ?

6. I have heard the authorised representatives of the parties and have gone through the evidence on the file. My finding on the issue framed is as under :—

7. The management has examined Surender Singh, JE, MW1, who deposed that the workman had worked from January, 1988 to July, 1988 and he had not completed 240 days of continuous service. He proved the muster rolls Bx. M 1 to Bx. M 7.

8. The workman has examined Trilok Singh, SDE, WW1, who brought the summoned record and deposed that according to the record, the workman had also worked from 1st November, 1987 to 30th November, 1987 and 2nd December, 1987 to 31st December, 1987. The workman examined himself as WW2 and reiterated the case set out in the claim statement. He insisted that he had also worked in the department in the month of October, 1987 besides the other period, the record of which has been produced.

9. According to the management, the workman had put in 197 days of service from 1st January, 1988 to 31st July, 1988, but the workman had summoned the record from the management which shows that he had also worked for the month of November and December, 1987 i.e. he had put in 29½ days in November and 30 days in December 1987. If that period is counted, the total number of days would exceed 240 days. The management did not pay any compensation while terminating his service. Since the petitioner had completed more than 240 days of service during the 12 months prior to the order terminating his service, he was entitled to compensation. Admittedly, no notice or retrenchment compensation was paid, which is in contravention of the provisions of section 25F of the Industrial Disputes Act, as such, the petitioner is entitled to reinstatement with continuity of service and full back wages. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

The 21st December, 1994.

Presiding Officer,

Industrial Tribunal-cum-Labour Court,  
Gurgaon.

Endorsement No. 1856, dated the 29th December, 1994.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,

Industrial Tribunal-cum-Labour Court,  
Gurgaon.

No. 14/13/87-6Lab./102.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s M. D. The Rewari Central Co-operative Bank Ltd., Rewari, District Mohindergarh *versus* Bhoop Singh :—

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 173 of 1989

*between*

BHOOP SINGH, S/O SHRI RAM PAT, C/O SHRI S. K. GOSWAMI, LABOUR LAW ADVISER,  
647/1, JAWAHAR NAGAR, NEW RAILWAY ROAD, GURGAON

*and*

THE MANAGEMENT OF M/S MANAGING DIRECTOR, THE REWARI CENTRAL,  
CO-OPERATIVE BANK LTD., REWARI, DISTRICT MOHINDERGARH

*Present :*

Shri S. K. Goswami, A.R. for the workman.

Shri M. P. Gupta, A. R. for the management.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute between the parties, mentioned above to this Court, for adjudication,—*vide* Haryana Government Labour Department endorsement No. 7588-93, dated 22nd February, 1989 :—

Whether termination/retrenchment of services of Shri Bhoop Singh is legal and just? If not, to what relief is he entitled?

2. According to the claim statement, the workman was appointed as a Peon on 3rd November, 1987 and was drawing a salary of Rs. 1221 p. m. at the time of termination on 30th September, 1988. It was pleaded that the workman had worked continuously and had completed 240 days and compliance of section 25F of the I. D. Act had not been made, therefore, his termination was illegal. The workman has sought his reinstatement with full back wages.

3. The management took up the plea in the written statement that class III employees were employed through interviews and offers were thereafter sent on the basis of selection list and on account of non availability of selection list, temporary *ad hoc* recruitment was made by the Managing Director and in the present case the workman was appointed on *ad hoc* basis for a fixed period and he had worked on daily wages and *ad hoc* basis for the following period :—

3-11-1987 to 31-12-1987

1-1-1988 to 29-3-1988

4-4-1988 to 30-6-1988

4-7-1988 to 30-9-1988

4. It was pleaded that the workman had no right or lien and his services were terminated in terms of the contract and the case fell under section 2(oo) of the I. D. Act and it would not amount to retrenchment.

5. In the rejoinder, contents of the written statement were controverted, while those of the claim statement were reiterated.

6. On the pleadings of the parties, following issue was framed on 15th February, 1991 :

Whether termination/retrenchment of services of Shri Bhoop Singh is legal and just? If not, to what relief is he entitled?

7. I have heard the authorised representatives of the parties and have gone through the evidence on the file. My finding on the issue is as under.

8. The management has examined Gokal Ram MW1, who deposed that the workman was appointed on 3rd November 1987,—*vide* appointment letter Ex. M1 on daily wages and on 1st January, 1988 another appointment letter Ex. M2 was issued and his services were terminated,—*vide* order Ex. M3. The workman had again sent an application for appointment and the application and joining report were Ex. M5 and Ex. M6. He also proved letters and orders Ex. M7 to Ex. M10. He stated that there were various gaps in between. He admitted that there was a vacant post, therefore, appointment was made. According to him, no compensation had been paid.

9. The workman has stepped into the witness box as WW1 and deposed that he was appointed on 3rd November, 1987 and his services were terminated on 30th September, 1988 and no compensation was paid to him.

10. A perusal of the written statement shows that except for 4 days break on two occasions, workman had been continuously working from 3rd November, 1987 to 30th September, 1988. It has been admitted by MW1 that the workman had put in 322 days of service. According to the written statement list reviews held and selection list was prepared and thereafter offer of appointment was made. It has been pleaded that since there was no seniority list therefore, appointment was

made on *ad hoc* basis for a fixed period. The order Ex. M1 shows that there was a vacant post, but the offer of appointment for the post of the peon had been made only as a stop gap arrangement. It had been argued before me that the term stop gap arrangement written in the appointment order referred to a temporary arrangement, since peons were on long leave and appointment of 89 days had been offered from time to time. This argument has no force, as a different plea had been taken in the written statement and MW1 had specifically stated that there was a vacancy lying and this mode i. e. offering of post for 89 days giving a few breaks in between can be said to be a unfair labour practice. It was so held in **Chief Administrator, Haryana Urban Development Authority, Manimajra versus Presiding Officer, Labour Court, Rohtak, 1994 LLR page 454**. It appears that the workman had been employed each time for a period of 89 days and his services were terminated so as to deprive him of the benefits which had been accrued to him on account of his long service. Admittedly, no enquiry was pending against the workman, nor any chargesheet had been served upon him, it, therefore, implies that the workman had been performing his job to the satisfaction of his superiors. It is not a case where the services were no longer required or that the work assigned had been completed. The action of the management in this case was solely intended to deprive the workman of his valuable right to remain in employment. In the present case the workman had completed more than 240 days of service during 12 months prior to the order terminating his services. No notice on retrenchment compensation was paid, therefore, it amounts to termination, as such the workman is entitled to reinstatement with continuity of service and full back wages. Reference is answered accordingly.

ANITA CHAUDHARY,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Gurgaon.

Dated :  
21st December, 1994.

Endst No. 1855, dated the 29th December, 1994

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I. D. Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Gurgaon.

No. 14/13/87-6 Lab./117.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s S.D.O., P.H. Huda, Jind *versus* Suresh :—

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 226 of 1994

between

SHRI SURESH, S/O SHRI SAJAN, VILL. AND P.O. PUTHI, DISTT. JIND,

.. Workman

and

S.D.O. P.H., HUDA, JIND

.. Management

Present :  
Workman in person.

Shri B. S. Kaushik, A.D.A. for the management.

AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department, Endorsement No. OV/Bhiwani/30-92/18211-16, dated 7th April, 1992 :—

Whether the termination of services of Shri Suresh is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was appointed as Sweeper on 1st August, 1990 by the respondent and he worked upto 28th September, 1991 regularly at a monthly salary of Rs. 1063/- but the services of the applicant were terminated without any notice or chargesheet by the respondent but non complying of the provisions of Section 25-F & H of the I.D. Act. Hence the termination of that account amounts to retrenchment. Thus this claim statement was filed by the applicant that he be reinstated with continuity of service and with full back wages and also with costs.

3. The management appeared and filed the written reply that this Court has no jurisdiction to try and entertain the present petition in view of Section 50 of the HUDA Act, 1977; the petition is not maintainable in the present form. The HUDA is not an 'industry' nor the petitioner is a workman. The applicant was engaged on daily wages as sewerman and not as a sweeper as mentioned in the statement of claim on 1st August, 1990 at a daily wages and not on monthly basis and discharged in March, 1991 due to non-satisfactory to work. After remaining 23 days absent he was re-engaged in April, 1991 to September, 1991. The casual labour is engaged by the J.E. as per requirement of work. When the work is completed then the labour is disengaged and hence there is no violation of Section 25-F of the I.D. Act. The Public made complaint regarding the sewer of Urban Estate, Jind. Most of the sewer lines remained checked which were to be cleaned by the sewerman engaged by the department. So, the claim statement be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties. The following issues were framed :—

1. As per terms of reference ?
2. Whether this Court has no jurisdiction ?
3. Whether the claim petition is not maintainable ?
4. Whether the management is not an 'industry' ?
5. Relief ?

5. My findings on the above issues with reasons thereof are as under :—

#### Issue No. 1 :

6. The workman has come into witness box as WW-1 and closed his evidence. The management has examined Shri Subhash Chand, Clerk, as MW-1 and evidence thereafter closed.

7. MW-1 Subhash Chand made the statement that the applicant was appointed on 1st August, 1990 and he worked upto November, 1991 though with in between breaks. He also made the statement that the applicant had worked upto 28th November, 1991 and appointed some other person who was appointed in place of the workman. He could not say on which basis he was appointed. However, Subhash Chander, MW-1 made statement that he was not having the record with him that he could say that any notice was given to the workman. When the workman left the work they would wait for him for 10-12 days.

8. Muster Rolls is produced by the management in the evidence which is Ex. M-1. It is proved from the muster roll Ex. M-1 that workman had worked with the respondent department during the month August, 1990 to November, 1991. As Subhash Chander has made the statement that the applicant had worked for 24 days in September, 1991. He does not state whether he worked for the whole period in the remaining months or not as he has not stated so. It is proved that he had worked for whole months as claimed by the applicant. Even if he worked for more than 240 days and he left the job, even then the applicant is presumed to have worked the whole year i.e., of 365 days-240 days. As such it is proved that workman had worked for more than 240 days in 12 calendar months. MW-1 Subhash Chander had not made statement that work and conduct of the applicant was not good. He did the work not properly and any warning was given to improve his working, it is proved that the work and conduct of the applicant was unblemished. Subhash Chander, Clerk also made statement that after relieving of the applicant of work, other person was appointed to do the work. It is as such proved that the management has appointed any other person in place of the workman and the work and conduct of the applicant was good, then why the applicant is removed from the job. There is no suggestion made by the department as to why the applicant was removed from the job, as the applicant had worked for more than 240 days, he was retrenched but not complied with Section 25-F and G of the I.D. Act.

9. The learned A.R. for the management made submission that notice is not required because the applicant was casual labour. The I.D. Act, refers to a labour doing work as casually or permanently and hence I am of the view that notice is required.

10. For the above said reasons I am of the view that the retrenchment of the workman is illegal, null and void and as such I decide this issue in favour of the workman and against the management.

**Issues No. 2, 3 and 4 :**

11. All these are not argued by the learned A.D.A. for the management. Though the workman has filed the written arguments on these issues and as the A.D.A. for the management do not press these issues hence I leave up all the written arguments of the workman on these issues. As such these issues are decided against the management.

**Issue No. 5 (Relief) :**

12. In view of my findings on the above issues I accept the reference petition of the workman and I hold that the workman is entitled to be reinstated with continuity of service but with 50 percent (Fifty) of back wages. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

The 6th January, 1995.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. Ref. 226-94/50 dated 13th January, 1995.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh.

P. I. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

No. 14/13/87-6Lab./120.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Transport Commissioner, Haryana, Chandigarh *versus* Vihender Singh, Helper.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 735 of 1992.

*between*

SHRI VIHENDER SINGH, HELPER, S/O SHRI VED PARKASH, VILL. & P.O. BOHAR, TEHSIL &  
DISTT. ROHTAK .. Workman

*and*

THE M/S. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH (2) GENERAL MANAGER,  
HARYANA ROADWAYS, ROHTAK .. Management

*Present :*

Shri H. R. Vats, A. R. for the workman.

Shri S. C. Singal, L.O. for the management.

**AWARD**

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Deptt. Endorsement No. SOV/Roh/112-91/29874-80, dated 1st July, 1992 :—

Whether the termination of services of Shri Vihender Singh is justified and in order? If not, to what relief is he entitled?

2. The workman and the management were summoned. The workman appeared and filed the statement of claim that he was appointed on 29th January, 1990 as Helper on daily wages for one month by

the management. But the workman was not issued any appointment letter for month of October, 1990, but remained attending his duties regularly but his presence was not marked and he was also not paid the wages for the month of October, 1990. The General Manager, Haryana Roadways, Rohtak on 30th October, 1990 illegally terminated/retrrenched the services to the workman which amount to retrrenchment. In retrrenchment cases, mandatory provisions of Section 25-F (a) (b) of the I.D. Act are necessary. No mandatory provisions were complied with Section 25-F (a) and (b). No notice, notice pay, retrrenchment compensation was paid to the workman at the time of his illegal termination/retrrenchment on 30th October, 1990, the junior to him are still in service. The services of the workman was terminated without assigning any reason or cause. Hence this claim statement was filed that he be reinstated with continuity of service, all other benefits from the date of termination i.e. 30th October, 1990.

3. The management appeared and filed the written statement that petitioner was not appointed upto 30th October, 1990 but admitted the appointment of applicant as Helper on daily wages for the period from 29th January, 1990 to 28th February, 1990. He was appointed for the period from time to time detail of which is given as under :—

29th January, 1990 to 28th February, 1990, 5th March, 1990 to 31st March, 1990, 1st April, 1990 to 30th April, 1990, 1st May, 1990 to 20th May, 1990, 21st May, 1990 to 31st May, 1990, 1st June, 1990 to 30th June, 1990, 1st July, 1990 to 31st July, 1990, 1st August, 1990 to 31st August, 1990, 1st September, 1990 to 30th September, 1990.

4. The case of the workman was under the provisions of Sec. 2 (oo) of the I.D. Act and hence the provisions of Section 25-F (a) (b) are not applicable in this case. The reference of the applicant may be dismissed.

5. Replication was not filed. On the pleadings of the parties, the following issues were framed :—

- (1) As per terms of references ?
- (2) Relief ?

6. My findings on the above issues with reasons are as under :—

#### Issue No. 1

7. The workman came into witness box as WWI and closed the evidence. The management has examined Shri Ram Phal, Clerk as MWI and closed the evidence.

8. The only question involved in this case is whether the workman had completed more than 240 days of services in 12 calendar months or not. The management has given in the written statement the days of which he worked. According to written statement he had worked for more than 240 days in 12 calendar months. Now the question is only whether his services were terminated or he was retrrenched as according to Section 25F of the I.D. Act or not. Ram Phal as MWI did not make any statement that if he was paid any notice pay, retrrenchment compensation or any notice, etc. as required under Section 25-F of the I.D. Act, is made or not. It means the compliance of Section 25-F was not made and as the workman had completed 240 days of service in the year, this termination amounts to retrrenchment and terminated not according to law.

9. The question raised by the learned L. O. for the management is that as the workman had worked the services for fixed period, therefore, he was not retrrenchment as required under Section 2 (oo) of the I.D. Act and this case falls under Section 2 (oo) (bb) of the I.D. Act. When the workman was being appointed for difference periods in every month and the workman was not person who can be said have been having any specified knowledge and he was the ordinary worker, therefore, his case is not covered under section 2(cc) (bb) of the I.D. Act and the termination was illegal and against the provisions of section 25F of the I.D. Act, his termination can be called retrrenchment and that retrrenchment is not according with law. The only dispute now remain whether the workman had been working in the months of October, 1990 or not. As the workman has not produced any evidence (documentary evidence) to the effect that he had been working during the month of October, 1990 which the respondent is denying that he worked in the month of October, 1990. I have no option but to hold that it is not proved that he had worked during the month of October, 1990.

10. The learned L. O. for the management contended that as the workman is proved to have been terminated from service in the month of September, 1990 but his reference is regarding termination of service in the month of October, 1990, it is not proved and hence the whole reference petition becomes entitled to be dismissed. I do not agree with this contention because I have gone through the reference petition, it is not mentioned whether the termination order taking place in the month of September, 1990 or October, 1990 is valid or not. The reference petition is only on the point whether his termination is legal or not. Which I am of the view that the case is maintainable.

11. For the above said reason I accept the reference petition and decide this issue in favour of the workman and against the management.

**Issue No. 2 (Relief) :**

12. In view of my findings on the above issue I accept the reference petition and hold that the workman is entitled to be reinstated with continuity of service but with 50 per cent (FIFTY) of back wages. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

The 5th January, 1995

**P. L. KHANDUJA,**  
Presiding Officer  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. 49, reference No. 735—92 dated the 13th January, 1995.

Forwarded in (four copies) to the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh.

**P. L. KHANDUJA,**  
Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

**No. 14/13/87-6 Lab./146.**—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. Saraswati Sugar Mills, Yamunanagar, *versus* Shri Lalan.

**IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGES),  
PRESIDING OFFICER, LABOUR COURT, AMBALA**

**Ref. No. 222 of 1992**

**WORKMAN SHRI LALAN, SON OF SHRI LAXMI THROUGH SHRI BALBIR SINGH, 126, LABOUR COLONY, YAMUNA NAGAR, AND THE MANAGEMENT M/S. SARASWATI SUGAR MILL, YAMUNANAGAR**

*Present:*

None, for the workman.

M.R. Shri R. L. Gupta.

#### **AWARD**

In exercise of the powers conferred by Clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Lalan and the Management M/s. Saraswati Sugar Mill, Yamuna Nagar to this Court for adjudication,—*vide* Haryana Government, notification bearing No. 52687—692, dated 2nd December, 1992:—

**"Whether the termination of the services of Shri Lalan is valid and justified? If not so, to what relief is he entitled?"**

The workman raised an industrial dispute by serving a demand notice, dated 14th May, 1992 under section 2-A of the Act. The conciliation proceedings were taken up by Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his claim statement, dated 16th February, 1993. According to the workman he was serving with the management for the last more than five seasons continuously as daily rated worker

and his services were illegally terminated on 25th January, 1992 without serving him any notice and also without complying with the provisions of section 25-N of the I.D. Act, as more than 1000 workers have been working in the concern and the said factory falls under the definition of Industrial establishment as defined under section 25-L of the Act. It is alleged that after the lapses of three months the workman was told that his services have been terminated because his brother Raj Bali has already been working in the concern and as per standing instructions of the management as no other relatives can be allowed to work. It also alleged that the management has also engaged new hand in his place and no opportunity was afforded to him to explain his position. The workman demanded his reinstatement with continuity of service and back wages.

The management appeared and resisted the claim. It was pleaded that during the course of conciliation proceeding it was specifically pleaded that the workman absented and did not offer himself for casual employment, thereafter and therefore abandoned the job even for the purpose of casual employment. It was also pleaded that there was no industrial dispute on that ground. This fact is mentioned in the report of Conciliation Officer dated 29th June, 1992. It is alleged that the question of abandonment or otherwise could not be decided by the Government, after taking the role of adjudicator and therefore the making of reference on the basis that the services were terminated by the management is without jurisdiction and not capable of adjudication. On merits it was pleaded that the workman was employed intermittently as a casual worker. It was pleaded that no notice was required to be issued nor the provisions of section 25-N are applicable to the seasonal establishment. The management pleaded for rejection of the claim.

Workman submitted replication controverting the allegations of the management and reiterated those made in the claim statement. On the pleadings of the parties, the following preliminary issues were framed:

1. Whether the terms of reference is illegal ? OPW.
2. Relief.

Later on workman absented and accordingly *ex parte* proceedings were taken against him. The management produced W-1 Shri Sat Pal, Time Keeper who stated that the management employee seasonal worker and the number of such seasonal workers is 1200. He stated that the workman used to be a casual worker with them on seasonal basis. He also stated that the workman lastly worked on 24th January, 1992 and thereafter did not come and served demand notice after three or four months. He stated that the management submitted writing Ex-M1 before the Labour Officer-cum-Conciliation Officer on the basis of which Labour Officer-cum-Conciliation Officer sent the report to the Labour Commissioner. MW-2 Shri S.S. Aggarwal, Manager stated that the workman never worked for 240 days and that he used to casually come on work during the season and later on left coming.

The workman has not appeared in order to substantiate his claim. In the absence of the workman evidence of the witnesses of the management has gone unrebutted. It is therefore clear that the services of the workman were never terminated. Rather the workman resigned the job of his own. This fact was also found mentioned in the report of the Labour Officer-cum-Conciliation Officer. The workman's reference has therefore, made by the appropriate government is thus not proper and the workman is not entitled to any relief. On the basis of such a reference. The reference shall stand answered against the workman and in favour of the management.

S. R. BANSAL,

The 29th December, 1994.

Additional District and Sessions Judge,  
Presiding Officer, Labour Court, Ambala.

Endst. No. 1984, dated 30th December, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,  
Presiding Officer, Labour Court, Ambala.